

UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF TENNESSEE  
WESTERN DIVISION

In re: **KIRBY OAKS INTEGRA, LLC;**  
**WAVERLY GARDENS OF MEMPHIS, LLC,**  
**Debtors-in-Possession.**

**Case No. 08-30221PJD**  
**Case No. 08-30218PJD**  
**Chapter 11**

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**UNITED STATES TRUSTEE'S MOTION TO DISMISS**

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The United States Trustee for the Western District of Tennessee ("UST") respectfully moves this court for an Order dismissing these jointly administered cases, pursuant to 11 U.S.C. §1112, and states as cause the following:

1. On October 2, 2008, the Debtors-in-possession ("Debtors") filed Chapter 11 petitions with an expedited Motion to Jointly Administer. An order jointly administering the cases was entered on October 6, 2008. The meetings of creditors were set for October 31, 2008, and were held on that date.
2. The Debtors have failed to file monthly operating reports since December 31, 2009 through the present.
3. Without timely operating reports, the UST cannot determine the exact amount of quarterly fees due, because this amount is calculated based upon information contained in the monthly operating reports. The estimated amount past due is \$9,790.27 for Kirby Oaks for the second through fourth quarters of 2009, and \$9,780.45 for Waverly Gardens for the third through fourth quarters of 2009, and the first quarter 2010 fees for both will be due on April 30, 2010.
4. Without timely operating reports, the UST likewise has no way to tell whether post-petition obligations, including, *inter alia*, any tax obligations or required liability insurance premiums, are being met; and whether the Debtor is otherwise acting in compliance with bankruptcy law and rules.

5. 11 U.S.C. §1112(b)(4) defines "cause" for conversion or dismissal of a Chapter 11 case as, *inter alia*, the unexcused failure to satisfy timely any filing or reporting requirement established by the bankruptcy statute or rules, or to pay fees, or to timely provide information reasonably requested by the United States Trustee.

**WHEREFORE**, the United States Trustee respectfully prays:

1. That the Court expedite this matter for hearing on the Motion to Dismiss;
2. That the Court, after hearing, grant the United States Trustee's Motion to dismiss both cases for failure to comply with the requirements of the Bankruptcy Code;
3. That the Court make a determination of the amount of 28 U.S.C. §1930(a)(6) fees that are due and outstanding, and enter an Order compelling payment of those fees, and filing of any outstanding Monthly Operating Reports within ten days from entry of the Court's order; and
4. That the Court, after hearing, grant such other relief as the Court deems just and proper.

Respectfully submitted,

RICHARD F. CLIPPARD  
U. S. TRUSTEE, REGION 8

By: /s/ Karen P. Dennis, Attorney (#06204)  
Office of the United States Trustee  
200 Jefferson Ave., Suite 400  
Memphis, Tennessee 38103  
901/544-3251

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**CERTIFICATE OF SERVICE**

I, Karen P. Dennis, Attorney for United States Trustee, do hereby certify on this 8<sup>th</sup> day of April, 2010, that a true and exact copy of the foregoing Motion to Dismiss has been mailed electronically or by United States mail, postage prepaid, to the following:

*Debtors; Debtors' attorney; matrix*

/s/ Karen P. Dennis, Trial Attorney (#6204)